Supreme Court, U.S.
FILED
APR 19 1991
OFFICE OF THE CLERK

No. 90-1390

In the Supreme Court of the United States

OCTOBER TERM, 1990

GENERAL MOTORS CORPORATION, PETITIONER,

v.

EVERT ROMEIN, ET AL.,
RESPONDENTS

FORD MOTOR COMPANY, PETITIONER,

v.

ARTURO GONZALEZ, ET AL.,
RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MICHIGAN

BRIEF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS AND MICHIGAN MANUFACTURERS ASSOCIATION AS AMICI CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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INTEREST OF THE AMICI CURIAE

The National Association of Manufacturers ("NAM") is an association of approximately 12,500 companies and subsidiaries that together produce the vast majority of this nation's manufactured goods and employ eighty-five percent of all manufacturing workers in the United States, many of whom are potentially affected by the issues addressed herein. NAM is affiliated with 158,000 additional businesses through its Associations Council and the National Industrial Council.

Michigan Manufacturers Association ("MMA") is a business association composed of private Michigan employers, organized and existing to study matters of general interest to its members, promote the interests of Michigan employers and of the public generally in the proper administration of laws relating to its members, and otherwise promote the general business and economic welfare of the State of Michigan. A significant aspect of MMA's activities is representing the interests of its member-employers in employment and labor relations matters before the courts, Congress, Michigan Legislature, and State agencies. MMA appears before this Court as a representative of approximately 2,700 private employers who employ more than 1,000,000 employees, all of whom are potentially affected by the issues presently before this Court. MMA is also an employer of workers in the State of Michigan and has an interest in this case both as an employer and as a representative of employers affected by the issues decided herein. NAM and MMA represent the interests of their member-employers through various means including, as here, appearances as *amici curiae* in cases of major concern.

The National Association of Manufacturers and Michigan Manufacturers Association submit this brief as *amici curiae*, with the written consent of all parties, in support of the Petition for a Writ of Certiorari in order to alert the Court to the broad significance of this dispute.

PRELIMINARY STATEMENT

These cases focus on the Michigan Legislature's May 1987 amendment of Section 354 of Michigan's Workers' Disability Compensation Act, 1981 PA 203, MCL 418.354. Section 354, originally enacted in 1981, was intended to reduce employer liability for workers' compensation benefits to the extent that they can be coordinated with other employer-funded, wage-replacement sources. After Section 354 became effective on March 31, 1982, a bill was introduced in the 1982 Michigan Legislature to limit coordination to workers injured after the effective date of the newly enacted provision. That bill was defeated. *See* Appendix to

Petition for Writ of Certiorari at pp 36a-37a (Riley, J., dissenting). Litigation subsequently ensued over the applicability of Section 354's coordination provision to previously injured claimants. In 1985, the Michigan Supreme Court unanimously held that the unambiguous wording of Section 354 permitted coordination of benefits for all workers' compensation claimants, regardless of the date of injury.[1]

In 1987, however, the Michigan Legislature enacted an amendment to the Workers' Compensation Statute designed to overrule the Michigan Supreme Court's decision in *Chambers* and to disallow coordination of benefits for claimants who had been injured prior to the 1981 statute's effective date of March 31, 1982. The 1987 amendment effectively repealed the 1981 coordination provision retroactively by requiring employers to pay refunds, with interest, to employees whose benefits had been coordinated during the five-year period that the 1981 statute was in effect. *See* Appendix to Petition for Writ of Certiorari at pp 90a-92a. At issue in these consolidated cases is the constitutionality of the 1987 amendment.

Those employers who began, prior to the *Chambers* decision, to coordinate workers' compensation benefits with other employer-funded wage-replacement sources did so in the belief that the statutory language clearly accorded them that right and with the knowledge that a 1982 legislative effort to withdraw that right had been defeated. Moreover, once *Chambers* was decided, and Michigan's highest court had unanimously held that Section 354 "clearly and unambiguously permitted coordination of benefits regardless of when the injury occurred," the actions of those employers and insurance carriers who had coordinated benefits were vindicated.

In its decision below, the Michigan Supreme Court rejected petitioners' contentions that the 1987 amendment violated due

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[1] *Chambers v. General Motors Corp., decided sub nom. Franks v. White Pine Copper*, 422 Mich. 636, 375 N.W.2d 715, *reh'g denied sub nom. Chambers v. General Motors Corp.*, 424 Mich. 1202, 389 N.W.2d 685 (1985).

process and unconstitutionally impaired contractual arrangements between the employers and their employees. The majority was unpersuaded that General Motors' and Ford's reliance on the 1981 coordination provision was reasonable, ostensibly in part, because employers "were on notice of the legislative debate regarding the proposed changes in the law." *See* Appendix to Petition for Writ of Certiorari at pp. 11a-12a. However, Michigan employers had no notice of the possibility of retroactive liability until the eve of the 1987 statute's enactment into law on May 14, 1987. The first bill providing for retroactive liability, SB 67 (H-2), was not introduced until May 6, 1987, and was not adopted until the following day. *See* 1987 Journal of the House, 1062-1063.

Although these consolidated cases address the constitutional validity of specific amendments to Michigan's Workers' Disability Compensation Act, the disposition of this litigation will impact virtually all legislative and judicial activity in the State of Michigan. In unprecedented "superseding legislation," the Michigan Legislature declared actions that were legal and complete when they were taken to be — by virtue of the Legislature's own statutory construction — incomplete and illegal. By redefining employers' entirely proper payment of workers' compensation benefits from 1982 until 1987 as "underpayments," the Michigan Legislature has ordered employers to pay "retroactively" amounts that were never owed. The ramifications of such retrospective restructuring of financial obligations may be extensive if the rationale of the Michigan Supreme Court's decision is imputed to other financial obligations. Michigan employers, particularly small businesses, and their counterparts in sister states rely upon the stability of the law in planning and conducting business. If this reliance on existing law is disregarded, employers will be subject to unpredictable changes in the cost of doing business that will threaten their ability to compete effectively in international markets and, in some cases, threaten their ability to survive in American markets.

The sequence of legislative and judicial events that impacted the two major employers that are parties to these consolidated cases also impacted scores of small businesses that are not self-insured for purposes of workers' compensation. The outcome of this litigation may have the most immediate and serious effect upon those employers who must meet the demands of the insurance marketplace, demands that can be expected to rise significantly.

REASONS FOR GRANTING THE PETITION

I. EMPLOYERS WHO RELIED ON A VALID STATUTE AS INTERPRETED BY THE STATE'S HIGHEST COURT EXPECT THAT OBLIGATIONS MET UNDER EXISTING LAW WILL NOT BE RETROACTIVELY REOPENED.

Michigan employers rely on the stability of the law when they hire employees and make commitments to them. They know that their workers' compensation insurance premiums will be calculated based on the number of their employees and their loss experience, which includes not only the number of individual claims, but also the dollar amount of benefits paid on their behalf. Under the constitutional analysis presented in the certiorari petition, this reliance interest of Michigan employers is protected by the Contract Clause's prohibition against impairment of "settled expectations." It is also protected by the Due Process Clause's requirement that a legislature "take into account the possibilit[y] that . . . conduct may have been taken in reliance upon the current state of the law . . ." *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 17 (1976).

Employers who complied with a valid statute should be secure in the knowledge that their action, correctly taken under color of that law, will not be later undone. As Chief Justice Burger stressed in this Court's decision in *Lemon v. Kurtzman*, 411 U.S. 192 (1973), "[S]tatutory or even judge-made rules of law are hard facts on which people must rely in making decisions

and in shaping their conduct." This "fact of legal life," which "underpins" the doctrine of nonretroactivity, compelled the Court to permit reimbursement to Pennsylvania parochial schools for secular educational services previously rendered under a statutory scheme that was ultimately found unconstitutional. *Id.* 411 U.S. at 199. Your *amici curiae* submit that the same notions of fairness and practical reality that recognize reliance on a statute that is subsequently found invalid also apply to a statute that is subsequently amended.

Michigan employers and insurance carriers similarly rely upon decisions of the state's highest court. Indeed, the fundamental principle of *stare decisis* mandates the application of prior decisions of a state's highest court to the same facts in other cases with different parties. Interpretation of a law by a state's highest court becomes part of the law as definitely as though it were written into that law. *Poulos v. New Hampshire*, 345 U.S. 395, 402 (1953). Reliance on judicial determinations provides uniformity and predictability both in the legal process and in the community at large. Lawyers and jurists advise citizens and businesses of their rights and obligations under existing law. The underlying purpose of the *stare decisis* principle is to furnish a clear guide for individuals' conduct, to enable them to plan their affairs "with assurance against untoward surprise" and to maintain "public faith in the judiciary as a source of impersonal and reasoned judgments." *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 403 (1970).

In the rare case where changes in social conditions and circumstances justify application of a new rule of law, the courts are empowered to change the law, by "the announcement of a new remedial rule to effectuate well-established primary rules of behavior." *Id.* Even when announcing a new rule of law, however, this Court has declined to attach retroactive effect where there has been good faith reliance on what appears to be correct interpretation of a statute. *See, e.g., Lemon v. Kurtzman*, 411 U.S. 192 (1973) and *Chicot County Drainage Dist. v. Baxter State Bank*, 308 U.S. 371 (1940).

Under our legal system, even judicial reversals of existing law are permitted only in those rare instances where changed conditions make the application of the old rule unjust. Other than in those instances, citizens, lawyers and judges rely on the continuity and predictability of the law. Justice Roberts once observed that frequent reversals of earlier decisions would bring adjudications of the Supreme Court "into the same class as a restricted railroad ticket, good for this day and train only." *Smith v. Allwright*, 321 U.S. 649, 669 (1944). This principle should apply with even greater force when reversal is accomplished through legislative rather than judicial action. The reliance interest implicated in that instance is not merely in current law, but also in the fact that, under a tripartite form of government, it is the task of the judiciary to finally declare what the law is.

Even where "significant restrictions apply," passengers rely on the fact that their tickets for future passage will be valid for the purpose for which they were issued. Under our legal system, we must be able to rely without penalty on the validity and finality of adjudications of the state's highest court. We submit that when a legislature acts contrary to that principle by overruling a final adjudication as it applies to pre-effective date transactions, it violates the most fundamental of reliance interests and therefore exceeds the scope of its power as limited by the Due Process and Contract Clauses of the United States Constitution.

II. RETROACTIVE INCREASES IN WORKERS' COMPENSATION LIABILITY WILL RAISE INSURANCE COSTS FOR ALL MICHIGAN EMPLOYERS, TO THEIR COMPETITIVE DISADVANTAGE.

The impact of the Michigan court's decision in these consolidated cases involving two large corporations will be significant for smaller businesses in the state. The effect of the Michigan court's decision for compensation carriers will be increased uncertainty with respect to projected risks and liabilities. Workers' compensation carriers will, of necessity, increase premiums to take into

account not only the risks and liability levels of which they are aware, but also the possibility of future retroactive increases in those liability levels. As an immediate result, workers' compensation coverage will become either extremely (in certain cases prohibitively) expensive, or unavailable. This will make insurance unnecessarily expensive and put Michigan businesses at a distinct competitive disadvantage.

Although the Michigan business community at large cannot ascribe a known dollar figure to its reliance, we can expect that the affordability/availability crisis that will result from the Michigan Legislature's action may further endanger some small manufacturers that are already experiencing the effects of an economic recession. As the costs of workers' compensation insurance rise, Michigan businesses will have fewer resources out of which to fund employees' wages and fringe benefits. If workers' compensation obligations remain forever contingent upon subsequent legislation retroactively applied, businesses will be unable to calculate their fixed costs for any period of years or to plan for the increased demands of the insurance marketplace. We submit that the Contract and Due Process Clauses of the Constitution were intended to prevent such consequences.

CONCLUSION

The questions raised by the present Petition are hard ones:

> The process of reconciling the constitutional interests reflected in a new rule of law with reliance interests founded upon the old is "among the most difficult of those which have engaged the attention of the courts, state and federal . . . "

Lemon, 411 U.S. at 198. Because this dispute presents a difficult issue of major significance to industry in this country, the National Association of Manufacturers and Michigan Manufacturers Association urge the Court to grant the Petition for a Writ of Certiorari.

Respectfully submitted,

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Dated: April 19, 1991